

11:18 am, Aug 13, 2019

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NATIONSTAR MORTGAGE LLC,

Plaintiff,  
-against-

**MEMORANDUM OF  
DECISION & ORDER**  
2:16-cv-03063 (ADS)(AYS)

THOMAS MCCARTHY, if he be living or dead, his spouse, heirs, distributes, and successors in interest, all of whom and whose names and places of residence are unknown to Plaintiff; MAYRA ORTEGA; HELEN CHRISTIAN REDA; STATE OF NEW YORK, and “JOHN DOE” said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being forecloses herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises,

Defendants.

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**APPEARANCES:**

**Shapiro, DiCaro & Barak, LLC**

*Attorneys for the Plaintiff*

175 Milecrossing Blvd  
Rochester, NY 14624

By: John A. Dicaro, Esq., Of Counsel.

**SPATT, District Judge:**

On June 13, 2016, plaintiff Nationstar Mortgage LLC (“Nationstar”) commenced this foreclosure action against defendants Thomas McCarthy (“McCarthy”), Mayra Ortega (“Ortega”), Helen Christian Reda (“Reda”), and John Doe (together “Defendants”), seeking, among other things, to foreclose on a mortgage encumbering the real property located at 31 Brookhaven Drive, Rocky Point, NY 11778 (the “Subject Property”).

On August 23, 2017, Nationstar amended its complaint solely to include Defendant State of New York (hereafter included within “Defendants”) and to have the caption on the Summons conform with the caption on the Complaint.

On June 4, 2018, after Defendants failed to answer or otherwise respond, the Clerk of the Court entered default pursuant to Federal Rule of Civil Procedure 55(a) as to all Defendants.

On December 13, 2018, Nationstar filed a motion for default judgment and judgment of foreclosure and sale. Nationstar also sought to amend the caption to delete John Doe, and to substitute Selene Finance LP as the plaintiff, in its place and stead.

On December 14, 2018, the Court referred the motion to United States Magistrate Judge Anne Y. Shields for a Report and Recommendation as to whether the motion for default judgment should be granted, and if so, what relief, if any, should be awarded.

On July 26, 2019, Judge Shields issued a Report and Recommendation (“R&R”) recommending as follows:

For the reasons set forth herein, the Court recommends that Plaintiff’s motion to amend the caption and dismiss Defendant John Doe be granted. The Court recommends that Plaintiff’s motion to amend the caption and substitute Selene Finance LP for Nationstar as the plaintiff of this action be granted. The Court further recommends that the motion for default judgment be granted and that Plaintiff be awarded:

- 1) \$305,315.41 to recover for the unpaid principal balance under the Note;
- 2) \$183,141.81 to recover for unpaid interest from February 1, 2008, to October 15, 2018;
- 3) \$129,502.89 to recover advances for taxes, hazard insurance, inspections, maintenance, and Mortgage Insurance Premiums;
- 4) Per diem pre-judgment interest in the amount of \$51.23 per day until judgment is entered;
- 5) Post-judgment interest pursuant to 28 U.S.C. § 1961(a);

- 6) \$9,757.40 in costs and disbursements; and
- 7) \$3,475.00 in attorneys' fees.

The Court further recommends that an Order similar to Plaintiff's Proposed Judgment of Foreclosure and Sale, but consistent with the instant Report and Recommendation, be entered and that a referee be appointed to effectuate the sale.

ECF 29 at 15-16.

The Plaintiff filed proof of service on July 29, 2019.

It has been more than fourteen days since the service of the R&R, and the parties have not filed objections.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result. *See Coburn v. P.N. Fin.*, No. 13-CV-1006 (ADS) (SIL), 2015 WL 520346, at \*1 (E.D.N.Y. Feb. 9, 2015) (reviewing Report and Recommendation without objections for clear error).

Accordingly, the R&R is adopted in its entirety. The Court grants Nationstar's motion to amend the caption and dismiss John Doe, motion to amend the caption and substitute Selene Finance for Nationstar as the Plaintiff, and motion for default judgment. The Court awards the Plaintiff the amounts recommended in the R&R. The Court selects Kenneth Seidell, Esq., as the referee. The Plaintiff is directed to submit a proposed judgment consistent with the R&R no later than fourteen days from the issuance of this order.

**SO ORDERED.**

Dated: Central Islip, New York

August 13, 2019

*/s/ Arthur D. Spatt*

ARTHUR D. SPATT

United States District Judge